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6           UNITED STATES DISTRICT COURT  
7           WESTERN DISTRICT OF WASHINGTON  
8           AT SEATTLE

9           JESSICA SAEPOFF,

10           Plaintiff,

11           v.

12           NORTH CASCADE TRUSTEE SERVICES,  
13           INC., et al.,

14           Defendants.

15           HSBC BANK USA N.A. AS TRUSTEE ON  
16           BEHALF OF ACE SECURITIES CORP.  
17           HOME EQUITY LOAN TRUST AND FOR  
18           THE REGISTERED HOLDERS OF ACE  
19           SECURITIES CORP. HOME EQUITY  
20           LOAN TRUST, SERIES 2007-WM2, ASSET  
21           BACKED PASS-THROUGH  
22           CERTIFICATES,

23           Counterclaimant,

24           v.

25           JESSICA SAEPOFF, et al.,

26           Counterdefendants.

Case No. 2:17-CV-957-RSL

ORDER GRANTING  
UNITED STATES' MOTION  
FOR PARTIAL SUMMARY  
ADJUDICATION  
REGARDING PRIORITY

This matter comes before the Court on the United States' "Motion for Partial Summary Adjudication Regarding Priority." Dkt. #56.

ORDER GRANTING UNITED STATES' MOTION FOR  
PARTIAL SUMMARY JUDGMENT REGARDING PRIORITY - 1

## **BACKGROUND**

## A. Plaintiff's Property Interest

Plaintiff Jessica Saepoff acquired an interest in property located at 4003 92<sup>nd</sup> Avenue SE, Mercer Island, WA 98040 (“the Property”) on November 2, 2006. Ex. 8, Dkt. #56-2 at 166–67. On the same day, she obtained two loans against it from WMC Mortgage Corp. (“WMC”) for \$490,000 and \$122,500, respectively. Exs. 9–10, Dkt. #56-2 at 170–199; see Ex. 1 (Saepoff Dep.), Dkt. #56-2 at 24:25–25:13. She stopped making mortgage payments in July 2010. Saepoff Dep. at 27:4–11. On September 23, 2010, she conveyed her interest in the Property to the 4003 92<sup>nd</sup> Avenue SE Land Trust with Martin Victor Brunt as Trustee (“Brunt”), via a Quitclaim Deed. Ex. 11, Dkt. #56-2 at 201–03. She received no consideration for it. See Ex. 3, Dkt. #56-2 at 129; Ex. 4, Dkt. #56-2 at 139. Less than three weeks later, on October 11, 2010, Brunt conveyed his interest in the Property back to plaintiff via another Quitclaim Deed. Ex. 12, Dkt. #56-2 at 205–06.

Despite the transfer, plaintiff testified that she lived on and retained the power to manage the Property, that she remained the owner of the Property, and that she made all payments on the Property, such as utility bills and property taxes. Saepoff Dep. at 41:25–42:4, 42:23–43:2, 46:14–47:11, 51:3–12; see Ex. 14 (Brunt Decl.), Dkt. #56-2 at ¶¶ 7, 10. Plaintiff was also the sole beneficiary of and in control of the Trust. Saepoff Dep. at 42:15–18, 43:12–16, 52:12–22; see Brunt Decl. at ¶ 8. She testified that the IRS contacted her regarding her tax liabilities in 2008, prior to her transfer to Brunt, although she also testified that she “had an agreement with [the IRS] and [she] was in compliance with [it], so everything was paid up as agreed at the time.” Saepoff Dep. at 53:6–54:25. Brunt stated that he knew at the time of the transfer that plaintiff “had tax liabilities and other debts,” and that he believes that “she was trying to shelter her assets from debtors.” Brunt Decl. at ¶ 9. On January 26, 2011, the IRS recorded a Notice of Federal Tax Lien against plaintiff. Ex. 16, Dkt. #56-2 at 229–31. This was released on August 7, 2017. Ex. 17, Dkt. #56-2 at 234–35.

1       On November 7, 2012, plaintiff again conveyed her interest in the Property to the 4003  
2 92<sup>nd</sup> Avenue SE Land Trust with Randy Styer as Trustee (“Styer”) via a Quitclaim Deed and  
3 received no consideration for it. See Ex. 3, Dkt. #56-2 at 130; Ex. 4, Dkt. #56-2 at 139. At the  
4 time, Styer was living on the Property with plaintiff. Saepoff Dep. at 60:21–24; see Ex. 2 (Styer  
5 Dep.) at 14:5–8. They were later married on February 13, 2015. Id. at 60:17–18; see Styer Dep.  
6 at 14:11–15. Despite the transfer, plaintiff remained the owner of the Property, controlled the  
7 Property, and continued making the payments on the Property. Saepoff Dep. at 64:22–66:5; see  
8 Styer Dep. at 22:19–23:16, 24:12–21, 25:20–26:1. On October 2, 2014, the IRS recorded a  
9 Notice of Federal Tax Lien with King County against plaintiff for her unpaid federal income tax  
10 assessments for the taxable years 2009 to 2012. Ex. 18, Dkt. #56-2 at 237–38.

11           **B. Procedural History**

12       On April 25, 2016, plaintiff filed a complaint in the King County Superior Court to  
13 invalidate the Deed of Trust and Notice of Trustee’s Sale issued by defendant HSBC Bank USA,  
14 N.A. as Trustee on Behalf of Ace Securities Corp. Home Equity Loan Trust and for the  
15 Registered Holders of Ace Securities Corp. Home Equity Loan Trust, Series 2007-WM2, Asset  
16 Backed Pass-Through Certificates (“HSBC”). Dkt. #25 at 2. Plaintiff also asserted claims for  
17 violations of Washington’s Consumer Protection Act (“CPA”), the Real Estate Settlement  
18 Procedure Act, and the Truth in Lending Act. Id. Plaintiff filed a Second Amended Complaint  
19 on February 10, 2017, asserting claims for injunctive and declaratory relief regarding the loan  
20 documents, mortgage fraud and fraudulent misrepresentation, quiet title, and violations of the  
21 Consumer Loan Act, the Deed of Trust Act, and the CPA. Id. On April 11, 2017, HSBC,  
22 MERSCORP Holdings, Inc. and Mortgage Electronic Registration Systems, Inc. and Ocwen  
23 Mortgage Servicing, LLC filed their answer and counterclaimed for judicial foreclosure of the  
24 subject Deed of Trust, joining, among others, the United States of America. Id.; see Dkt. #1-2 at  
25 7–20.

26       The United States removed the case to this Court on June 22, 2017. Dkt. #1 at 1–5; see 28  
27 U.S.C. §§ 1442(a)(1), 1444, 2410. It then filed its answer and claim, seeking a determination  
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ORDER GRANTING UNITED STATES’ MOTION FOR  
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1 that its tax liens are valid and attach to plaintiff's interest in the Property. See Dkt. #19. On  
2 October 5, 2017, the Court approved the stipulation regarding priority between HSBC and the  
3 United States. Dkt. #28; see Dkt. #27. The United States then filed this motion for summary  
4 judgment. Dkt. #56. It argues that it is entitled to a judgment determining that its liens from the  
5 taxable years 2009 to 2012 are valid, attach to the Property, and have priority over any interest  
6 that Styer has in the Property. Id. at 10. No response was filed. See Dkt. #60; see LCR 7(d).

## DISCUSSION

The Court grants summary judgment if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

“If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount … shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.” 26 U.S.C. § 6321. The lien attaches at the time the assessment is made and continues until the liability for the amount so assessed “is satisfied or becomes unenforceable by reason of lapse of time.” Id. at § 6322.

The Court “‘look[s] initially to state law’ to determine the taxpayer’s ownership interest in the property.” Id. at 1067 (quoting Drye v. United States, 528 U.S. 49, 58 (1999)). Under Washington law, § 6321 applies “not only [to] the property and rights to property owned by the delinquent taxpayer, but also [to] property held by a third party if it is determined that the third party is holding the property as a nominee or alter ego of the delinquent taxpayer.” United States v. Smith, No. C11-5101 RJB, 2012 WL 1977964, at \*5 (W.D. Wash. June 1, 2012) (quoting Spotts v. United States, 429 F.3d 248, 251 (6th Cir. 2005)). “Whether a person … holds property as a nominee of a taxpayer is determined by the degree to which a party exercises control over an entity and its assets.” Id. (citing United States v. Bell, 27 F. Supp. 2d 1191, 1195 (E.D. Cal. 1998)). District courts in Washington consider the following factors: “(1) Whether the nominee paid no or inadequate consideration … (2) Whether the property was placed in the

1 name of the nominee in anticipation of litigation or liabilities; (3) Whether there is a close  
2 relationship between the transferor and the nominee; (4) Whether the parties to the transfer  
3 failed to record the conveyance; (5) Whether the transferor retained possession; and (6) Whether  
4 the transferor continues to enjoy the benefits of the transferred property.” Id. (citing United  
5 States v. Black, 725 F. Supp. 2d 1279, 1291–92 (E.D. Wash. 2010)). “The factors to be  
6 considered in determining whether an entity is an alter-ego of a taxpayer are similar to the  
7 nominee factors.” Id. at \*6 (citing Sharp Mgmt., LLC v. United States, No. C07-402JLR, 2007  
8 WL 1367698, at \*3 (W.D. Wash. May 8, 2007)).

9 Styer paid no consideration for the Property. See Ex. 3, Dkt. #56-2 at 130; Ex. 4, Dkt.  
10 #56-2 at 139. Plaintiff had tax liabilities dating back to 2008. Ex. 18, Dkt. #56-2 at 237–38. She  
11 was living with Styer on the date of the transfer, and they were married approximately two years  
12 later. Saepoff Dep. at 60:17–18. Plaintiff retained possession of the Property and continued to  
13 make payments on and control the Property. Saepoff Dep. at 64:22–66:5; see Styer Dep. at  
14 22:19–23:16, 24:12–21, 25:20–26:1. There is no dispute as to any material fact—plaintiff did  
15 not even file a response—and the United States is entitled to have its liens attach to the Property  
16 as a matter of law. See Fed. R. Civ. P. 56; see Smith, 2012 WL 1977964 at \*5–6. The Court  
17 therefore need not reach the United States’ contentions with regard to Washington’s Uniform  
18 Fraudulent Transfer Act. Dkt. #56 at 9; see RCW § 19.40.041.

19  
20 **CONCLUSION**

21 For all the foregoing reasons, the United States’ motion for partial adjudication regarding  
22 priority is GRANTED. The Court hereby FINDS as follows:

- 23 1. Plaintiff is the owner of the Property;  
24  
25 2. The United States’ tax liens against plaintiff for the taxable years 2009 through 2012  
26 are valid and attach to her interest in the Property;

- 1           3. Randy Styer, Trustee of the 4003 92<sup>nd</sup> Avenue SE Land Trust, is plaintiff's nominee  
2           or alter ego, and neither he nor the 4003 92<sup>nd</sup> Avenue Land Trust have any interest in  
3           the Property;  
4           4. The United States' interest in the Property is superior to any interest that Randy Styer,  
5           and/or the 4003 92<sup>nd</sup> Avenue SE Land Trust, may claim in the Property.

6           DATED this 19<sup>th</sup> day of April, 2019.  
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9           Robert S. Lasnik

10           Robert S. Lasnik  
11           United States District Judge  
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